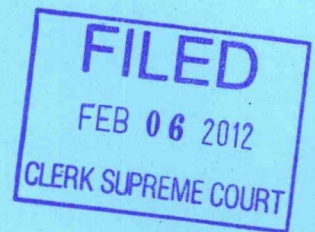


IN THE SUPREME COURT OF IOWA

NO. 11-2022



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DANNY HOMAN, WILLIAM A.DOTZLER, JR., BRUCE HUNTER,  
DAVID JACOBY, KIRSTEN RUNNING-MARQUARDT, and DARYL  
BEALL,

*Plaintiffs-Appellees/Cross-Appellants,*

v.

TERRY E. BRANSTAD, Governor of the State of Iowa,  
*Defendant-Appellant/Cross-Appellee.*

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On Appeal from the District Court for Polk County  
The Honorable Brad McCall

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**FINAL BRIEF OF APPELLANT/CROSS-APPELLEE  
GOVERNOR TERRY E. BRANSTAD**

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## STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. In *Turner v. Iowa State Highway Commission*, 186 N.W.2d 141, 149-53 (Iowa 1971), this Court ruled that the legislature cannot combine an appropriation provision and a policy provision into a single “item,” unless the legislature expressly states its intent to do so by including language conditioning or limiting the appropriation. One of Senate File 517’s provisions prohibited Workforce Development from closing field offices, but that provision does not expressly condition or limit any appropriation. The district court nevertheless ruled that the office-closure provision and the field-office appropriation are a single item. Was the district court correct?

*Alons v. Iowa Dist. Court for Woodbury Cnty.*, 698 N.W.2d 858 (Iowa 2005)

*Bennett v. Napolitano*, 81 P.3d 311 (Ariz. 2003)

*Colton v. Branstad*, 372 N.W.2d 184 (Iowa 1985)

*Godfrey v. State*, 752 N.W.2d 413 (Iowa 2008)

*Raines v. Byrd*, 521 U.S. 811 (1997)

*Rants v. Vilsack*, 684 N.W.2d 193 (Iowa 2004)

*Turner v. Iowa State Highway Commission*, 186 N.W.2d 141 (Iowa 1971)

*Welden v. Ray*, 229 N.W.2d 706 (Iowa 1975)

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2. Under the Iowa Constitution the governor can veto *any* item in an appropriations bill; nothing in the Constitution stops the governor from vetoing an item just because it might affect other items. The district court nonetheless ruled that Governor Branstad's veto of provisions defining "field office" and "workforce development center" was unconstitutional because the deletion of those provisions affected other provisions of Senate File 517. Can the district court's decision stand under a plain reading of the Constitution?

*Colton v. Branstad*, 372 N.W.2d 184 (Iowa 1985)

*Commonwealth v. Dodson*, 11 S.E.2d 120 (Va. 1940)

*Rants v. Vilsack*, 684 N.W.2d 193 (Iowa 2004)

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*Turner v. Iowa State Highway Commission*, 186 N.W.2d 141 (Iowa 1971)

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Iowa Code § 96.51

Iowa Code § 96.7A

Va. Const. art. 5, § 6(d)

Richard Briffault, *The Item Veto in State Courts*, 66 Temple L. Rev. 1171, 1193 (1993)

3. This Court has held that when a governor exercises his item veto authority during the pocket-veto period, the vetoed provision does not become law, even if the veto was improper. Here, the district court reinstated two provisions of Senate File 517 that Governor Branstad vetoed during the pocket-veto period. Did the district court impose the correct remedy?

*Rants v. Vilsack*, 684 N.W.2d 193 (Iowa 2004)

Iowa Const. art. III, § 16

### ROUTING STATEMENT

This Court has already decided to retain this case—which presents constitutional questions of broad public importance (*see* Iowa R. App. P. 6.1101(2)(a), (d))—and has scheduled oral argument for February 15, 2012.

## STATEMENT OF THE CASE

The Iowa Constitution gives the governor authority to approve appropriation bills “in whole or in part” and to veto “any item of an appropriation bill.” Const. art. III, § 16. This appeal is about the meaning of “part” and “item”—terms that this Court has said are interchangeable.

*Turner v. Iowa State Highway Comm’n*, 186 N.W.2d 141, 149-50 (Iowa 1971).

On June 30, 2011—the very last day of the legislative session—the legislature sent Governor Branstad Senate File 517, a 32-page appropriations bill that provides funding for a broad range of state agencies, including the Department of Workforce Development. One provision of the bill appropriates \$8.6 million for Workforce Development field offices. Another prevents Workforce Development from reducing the number of field offices.

The main issue on appeal is whether those provisions are separate items. Consistent with this Court’s decision in *Turner v. Iowa State Highway Commission*, 186 N.W.2d 141, 149-53 (Iowa 1971), Governor Branstad treated them as such. He vetoed the office-closure provision, but not the field-office appropriation. Among other things, the Governor also vetoed two provisions that define the terms “field office” and “workforce development center,” and two provisions that prohibit Workforce

Development from using appropriated funds for the National Career Readiness Certificate Program.

Plaintiffs—five of Iowa’s 150 state legislators and the head of AFSCME—disagree with Governor Branstad’s decision. Unable to garner the votes necessary to override his veto, they have asked the Judicial Branch to jump into the political fray. Plaintiffs filed a petition in Polk County District Court, claiming that the office-closure provision and the other vetoed provisions are “conditions” that may not be vetoed without vetoing the related appropriations.

The Governor and Plaintiffs filed cross-motions for summary judgment. The district court issued a split decision shortly after. The court ruled that the office-closure provision, as well as the provisions defining “field office” and “workforce development center,” were conditions or limitations that could not be vetoed by themselves. App. 54, 57. It therefore declared the vetoes null and void and ruled that the provisions became law when the Governor signed Senate File 517—a result neither party had advanced.<sup>1</sup> App. 61.

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<sup>1</sup> Plaintiffs initially asked for this remedy in their Petition, but abandoned that position on summary judgment when they requested that the district court throw out the entire bill. *Compare* App. 5 (requesting that the court declare that the “Governor’s attempted item vetoes in SF 517 are unconstitutional, illegal, null, void, and have no force and effect, and thereby adjudging that SF 517 became passed . . . *including* the provisions the Defendant

The court upheld the Governor's veto of the provision prohibiting the use of funds for the National Career Readiness Certificate Program. (App. 59).

Shortly after issuing its decision, the district court stayed the proceedings pending this Court's decision on appeal.

### STATEMENT OF THE FACTS

Item-veto cases do not turn on evidence. The relevant "adjudicative" facts—those facts that "establish the factual predicate for application of legal issues relevant to the particular case"—are usually limited to the date the bill passed, the language of the bill, and the date the Governor submitted the bill and transmittal letter to the Secretary of State. *Welsh v. Branstad*, 470 N.W.2d 644, 647-48 (Iowa 1991). Everything else—including the ultimate question of whether the vetoed provision is an "item" under Article III, Section 16 of the Iowa Constitution—is an issue of law for the court to decide. *Id.*<sup>2</sup>

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Governor had attempted to veto") with App. 42 (arguing that "the effect of the Defendant Governor's attempted item vetoes in SF 517 is that no provision of SF 517 became law").

<sup>2</sup> In support of their motion for summary judgment, Plaintiffs submitted the affidavit of William A. Dotzler, Jr., which contained argumentative political comment, inadmissible hearsay, legal conclusions, and post-hoc statements of legislative intent. The district court struck the affidavit, noting that the "facts" alleged therein were irrelevant to the legal issues before it. (App. 47).

### A. The Item-Veto Amendment

Forty-three states, including Iowa, give their governor power to veto portions or items of appropriations bills. The scope of that power varies state-by-state:

- **Wisconsin's** constitution provides that its governor can approve appropriations bills "in whole or in part." Wis. Const. art. 5, § 10. "The part approved shall become law," and the part objected to shall be returned to the legislature in the same manner as non-appropriations bills. *Id.*
- **Virginia's** governor is more restricted: He or she may veto any "item," but that veto cannot "affect the item or items to which he does not object." Va. Const. art. 5, § 6(d). In other words, items that are intertwined with others are not vetoable. *See Commonwealth v. Dodson*, 11 S.E.2d 120, 124 (Va. 1940).
- **Minnesota** places an additional restriction on its chief executive: The governor of that state may only veto an item "of appropriation." *Inter Faculty Org. v. Carlson*, 478 N.W.2d 192, 194 (Minn. 1991). If the "item" is in an appropriations bill but does not itself allocate money, the governor must leave the item as is, or veto the entire bill. *Id.*

These three constitutional provisions represent some of the item-veto provisions that exist today. More important, they existed in 1968 when Iowa amended its Constitution. Being the forty-third (and last) state to adopt an item-veto provision, Iowa could survey the states that went before it. It had three basic options to choose from: (1) the **Wisconsin** model—the governor can veto any part of the appropriation bill, regardless of its relation to other parts and regardless of whether it appropriates money; (2) the **Virginia**

model—the governor can veto an item in an appropriation bill (including a non-appropriation item), but only if its removal does not affect any other item; and (3) the **Minnesota** model—the governor can veto only those items that appropriate money.

Iowa chose the Wisconsin model. Article III, Section 16 of the Iowa Constitution provides that the “governor may approve appropriation bills in *whole or in part*, and may disapprove *any* item of an appropriation bill.” (emphasis added). Unlike Virginia, there is no prohibition on vetoing items that are interrelated with others. And unlike Minnesota, the veto is not limited to items that appropriate money. If a provision is an “item,” it may be stricken.

**B. *Turner v. Iowa State Highway Commission* – Item Defined**

This Court first interpreted the item veto amendment shortly after its enactment.

During the 1969 legislative session, the State Highway Commission requested \$80,000 to move 48 resident engineer offices. *Turner*, 186 N.W.2d at 149. The legislature did not oblige; although it sent the Governor a Highway Commission bill that appropriated money to the personnel department (the department tasked with moving the offices), Section 5 of the

bill seemingly put a stop to the Highway Commission's plan. *Id.* at 149,

153. It provided:

The permanent resident engineers' offices presently established by the State Highway Commission shall not be moved from their locations, however, the Commission may establish not more than two temporary resident engineers' offices within the State as needed.

*Id.* at 149.

Using the newly enacted item-veto amendment, Governor Ray struck Section 5 from the bill, but left the entire Highway Commission appropriation intact. *Id.* He explained the veto in this way:

My action is based on the following: The function of the Highway Commission is to construct and maintain roads and highways in the State of Iowa in the most efficient and effective manner possible.

Restricting the location or relocation of resident engineers' offices will inhibit the commission's efforts to operate at maximum efficiency.

Mr. Joseph R. Coupal, director of highways, estimates that this restriction could cost the State of Iowa an estimated \$100,000 during the biennium.

*Id.* at 143 (internal quotation omitted).

Like here, several legislators disagreed with Governor Ray's veto. And like here, they asked the courts to intervene in the political dispute. The legislators argued that the office-closure provision was a "condition" on the Highway Commission appropriation and therefore not itself an "item" under

the Iowa Constitution. *Id.* at 148-49. If Governor Ray disagreed with the office-closure provision—the legislators appeared to argue—he had to veto the Highway Commission appropriation as well. *Id.*

Not so, said this Court in a unanimous opinion. “The legislature may have intended to make [the office-closure provision] a condition, limitation or proviso on the expenditure of funds,” but it failed to draft the bill that way. *Id.* at 153. The office-closure provision did not contain any conditional or limitation “language” or “phraseology.” *Id.* at 150. As such, it was a separate “item” subject to veto. *Id.*

Thus, the “judicial message” to the legislature was this: “[I]f it expects judicial intervention to be available when the Governor attempts to excise limitations or qualifications on appropriations through an item veto, the legislature must provide the court with *clear language* establishing the necessary legal foundation.” Brent R. Appel, *Item Veto Litigation in Iowa: Marking the Boundaries Between Legislative and Executive Power*, 41 Drake L. Rev. 1, 19 (1992) (emphasis added) (hereinafter, “Appel”). In other words, if the legislature wants to condition or limit an appropriation, it must “expressly” say so. *Id.* at 20.

**C. Senate File 517.**

On June 30, 2011, the Iowa General Assembly sent Governor Branstad Senate File 517, a 32-page appropriations bill that provided funding for a broad range of state agencies, including the Department of Workforce Development, the Department of Cultural Affairs, and the Board of Regents. The appropriations cover fiscal years 2012 and 2013, and total over \$60 million.

Governor Branstad vetoed several provisions in Senate File 517, six of which are relevant to this appeal. Three of those provisions are in Division I of the bill, three are in Division IV. The provisions in Division I are identical to those in Division IV; the two divisions simply cover different fiscal years. Accordingly we will discuss the provisions in Division I.

**1. The Office-Closure Provision**

Section 15, paragraphs (3)(a)-(3)(c) and the identical provisions in Division IV, Section 61 state:

**3. WORKFORCE DEVELOPMENT OPERATIONS**

a. For the operation of field offices, the workforce development board, and for not more than the following full-time equivalent positions:

.....	\$8,671,352
.....	FTEs 130

b. Of the moneys appropriated in paragraph "a" of this subsection, the department shall allocate \$8,660,480 for the operation of field offices

c. The department shall not reduce the number of field offices below the number of field offices being operated as of January 1, 2009.

(App. 16).

Governor Branstad vetoed paragraph c, which does not contain any conditional language or expressly limit the amount of money appropriated for the operation of field offices. Governor Branstad struck the policy provision from the bill because:

This item would prohibit Iowa Workforce Development ("IWD") from putting forth an enhanced delivery system that broadens access to Iowans across the state in fiscal year 2012. In order to develop a sustainable delivery system in light of continually fluctuating federal funding, the department must put forth a system that embraces the use of technology while providing enhanced benefits through maximum efficiencies. At this time, IWD has over one hundred ninety virtual access point workstations in over sixty new locations throughout the state in order to increase access to these critical services. Iowans are already utilizing expanded hours of operations, six days a week. At my direction, IWD will have hundreds of additional virtual access points by the end of fiscal year 2012.

(App. 39).

## 2. The Definition Provisions

Governor Branstad also vetoed Section 15, paragraphs 5(a) and (b), and the identical provisions in Division IV, Section 61. These provisions define the terms "Field Office" and "Workforce Development Center."

### 5. DEFINITIONS

For purposes of this section:

- a. "Field office" means a satellite office of a workforce development center through which the workforce development center maintains a physical presence in a county as described in section 84B.2. For purposes of this paragraph, a workforce development center maintains a physical presence in a county if the center employs a staff person. "Field office" does not include the presence of a workforce development center maintained by electronic means.
- b. "Workforce development center" means a center at which state and federal employment and training programs are selected and at which services are provided at a local level as described in section 84B.1.

App. 17.

Governor Branstad vetoed these provisions because:

This item attempts to define a delivery system in such a way as to prevent growth and progress in serving Iowans in fiscal year 2012. IWD has recognized the necessity of delivering services through multiple streams, including technology. As such, IWD is putting forth a plan that delivers more services to Iowans while streamlining government.

App. 39.

## ARGUMENT

### **I. The Office-Closure Provision is A Separate Item Subject to Veto**

**Preservation of error.** The parties addressed the issue below on summary judgment and the district court ruled on it. It was preserved.

**Standard of Review.** Whether a provision is an “item” under the Iowa Constitution is a question of law that this Court reviews *de novo*. *Welsh*, 470 N.W.2d at 647-48.

#### **A. The office-closure provision contains no “condition” or “limitation” language, and thus under *Turner*, it is a separate item subject to veto.**

This is a straightforward case—and one that should not have been litigated to this level. For over 40 years the legislature has been on notice that if it intends to create a condition—that is, to link two provisions together as a single item—then it must expressly say so. And for over 40 years, our governors have legitimately relied on that directive. If a provision does not contain conditional or limitation language, then it is not a condition at all. It is an item. And it may be vetoed—by itself.<sup>3</sup>

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<sup>3</sup> The analysis is more complicated when the legislature does use conditional language. The *Turner* rule does not work in reverse—that is, labeling something a condition does not necessarily make it so. The legislature cannot, for example, turn an appropriations bill into a series of cascading dominos, whereby the veto of one provision takes down the rest. *Colton v. Branstad*, 372 N.W.2d 184, 192 (Iowa 1985) (explaining that the legislature may not link together provisions so that “the bill would become an inseverable whole, impervious to item veto”). Similarly, the legislature cannot insulate a policy provision by inserting it in an appropriations bill and purporting to make it a “condition”

The office-closure provision contains no conditional or limitation language. As such, Governor Branstad was free to treat the provision as a single item. *See Turner*, 186 N.W.2d at 150, 153.

The district court saw it differently. Despite the lack of express limitation language, the court ruled that the office-closure provision is a condition or limitation on the field-office appropriation in Section 15, paragraph 3(a). That ruling is not faithful to the text of Senate File 517 or the Constitution and this Court's interpretations of it.

According to the district court, this case is “factually” distinguishable from *Turner* because “[i]n *Turner* the vetoed provision placed ‘no prohibition against the use of any moneys appropriated by the act,’” while here “subparagraph (c) *specifically identified* the appropriation to which the limiting language was intended to apply: the appropriation for the operation of field offices.” App. 53-54 (emphasis added) (quoting *Turner*, 186 N.W.2d at 150). That is simply not true. The two provisions do deal with the same subject—field offices. But the office-closure provision does not

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of an unrelated appropriation. *Id.*; *see also Turner*, 186 N.W.2d at 152 (the legislature may not “coerce the Governor into approving a lump sum appropriation by combining purpose and amount”). In other words, *if* the legislature does use condition or limitation language, the court must consider whether that provision is a rider (an item by itself) or a condition or limitation (a piece of item). But that analysis is irrelevant here, since the office-closure provision contains no such language.

identify *any* appropriation, nor does it contain condition or limitation language. It states, in full: “The department shall not reduce the number of field offices below the number of field offices being operated as of January 1, 2009.” App. 16.

Because the office-closure provision is not an explicit condition or limitation, the district court’s reliance on *Welden v. Ray*, 229 N.W.2d 706 (Iowa 1975) was also misplaced. The legislators won in *Welden* precisely because they followed the Court’s holding in *Turner*—that is, they wrote in an express condition. Unlike the vetoed provision in *Turner*, the vetoed provisions in *Welden* expressly referred to an appropriation and directed or limited its use. *Welden*, 229 N.W.2d at 707-708; *see also* Appel, at 21 (“Unlike the veto in *Highway Commission*, all of the vetoes [in *Welden*] involved express legislative restrictions on how to spend appropriated funds.”).<sup>4</sup>

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<sup>4</sup> For instance, Senate File 540 appropriated a total of \$1 million “[f]or purposes of carrying out the provisions . . . relating to the treatment of alcoholism,” but provided that that “not more than fifteen percent” of the “*the following amount*”—that is, the \$1 million—“may be allocated to any one local alcoholism unit or facility.” *Id.* at 707 (emphasis added). Governor Ray vetoed the express limitation but left the \$1 million appropriation. *Id.*

Similarly, Section 3 of House File 780 appropriated over \$870,000 “[f]or salaries, support, maintenance and miscellaneous purposes *for not to exceed seventy-two permanent full-time positions*,” and Section 4 appropriated over \$240,000 “[f]or salaries, support, maintenance, and miscellaneous purposes for the state building code; *however, in no event, shall this include more than three additional employees*.” *Id.* at 708. Governor Ray accepted the appropriated amounts but vetoed the italicized passages, both

Contrary to the district court's ruling, *Welden* actually reinforces the constitutionality of Governor Branstad's veto. The legislature knows how to condition or limit an appropriation. It did *not* do so here. In one provision, it appropriated money for field-offices. In another, it expressed its desire to keep field offices open. Neither provision mentions or refers to the other. They are close in proximity, to be sure. But this Court has never ruled that physical proximity is enough.

*Turner* "held the legislature to a demanding standard of drafting if it wished restrictions to be part of an item." Appel, at 20. If the legislature intends to create a condition, limitation, or restriction on an appropriation—, thereby creating a single item rather than two—then it must expressly say so. The office-closure provision contains no language conditioning or limiting the field-office appropriation. It does *not* refer to the field-office appropriation (or to any other appropriation for that matter). Thus, regardless of what *some* members of the legislature may have intended, the office-closure provision stands as a single item. The Governor was correct in treating it as a single item.

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of which are express conditions. *Id.* (Note: The vetoed language in *Welden* does not appear in the electronic Westlaw version of the opinion.)

**B. The district court improperly gave effect to what it perceived to be the unexpressed intent of the legislature.**

The district court's attempt to distinguish *Turner* appears to have been driven by its disagreement with that decision. Rather than holding the legislators to a standard where they must write what they mean—a standard that is really not so demanding—the district court did what this Court refused to do in *Turner*: It engaged in the hapless exercise of trying to divine what the legislature *really* meant.

Although the office-closure provision contains no condition or limitation language, the district court concluded that “it is clear from the *context* of the bill that the vetoed language was *intended* by the legislature to be a qualification.” App. 53 (internal quotation omitted; emphasis added). Well, maybe. But maybe not. Perhaps the bill's drafters could not garner the votes for an express limitation. Or perhaps they simply forgot *Turner's* command. And what about the members of the General Assembly who did not draft the provision but whose votes were equally important to the bill's passage? Understanding that a condition or limitation must be express, perhaps some of them disagreed with the legislature's micro-management of Workforce Development, but yet voted for the compromise legislation because they knew Governor Branstad could veto the provision under *Turner* without excising the field-office appropriation.

We do not know, of course, what the legislators believed or intended when they voted on Senate File 517. That's the point. All we know is that a majority of both chambers approved a comprehensive appropriations bill containing a provision that prohibited the closure of Workforce Development field offices. Whether a majority of both chambers would have approved a similar provision when phrased as an express condition or limitation is irrelevant. They didn't.

**C. The *Turner* rule is clear, provides needed guidance to the legislative and executive branches, and keeps the judicial branch out of political disputes**

*Turner* has been on the books for over 40 years. *Stare decisis* principles alone would suggest that the Court should remain faithful to its holding. *Stare decisis* aside, the *Turner* rule is the right one. It brings needed clarity to an area of law that is confusing and sometimes confused. See Richard Briffault, *The Item Veto in State Courts*, 66 Temple L. Rev. 1171, 1193 (1993) (hereinafter, "Briffault") (describing other areas of Iowa's item-veto jurisprudence as "quite murky"). And it avoids the kind of judicial tea-leaf reading that occurred here.

The Governor reviews hundreds of appropriations within a very short period. Doing so should not require a team of wordsmiths who can analyze "context" and soothsayers who can read legislators' minds. The *Turner* rule

is clear, predictable, and easy to apply. Moreover, it does not alter the balance of power between the executive and legislative branches. *See* Appel, at 19 (noting that *Turner* did not focus on “abstract notions of what might properly be a legitimate restriction or qualification on an appropriation measure”).

The district court’s rule here, on the other hand, would create perpetual uncertainty. Appropriation bills would likely become more ambiguous—perhaps by design. And item-veto litigation in this State would increase substantially. That is no good for anyone, least of all this Court. Deciding political disputes between the legislature and the governor is something that the judicial branch should be loath to do. *Godfrey v. State*, 752 N.W.2d 413, 425 (Iowa 2008) (recognizing that the Court should “not unnecessarily interfere with the policy and executory functions of the two other properly elected branches of government”).

This dispute is, after all, a political one. Plaintiffs in this case are not users of Workforce Development services, and they have not alleged any other “specific and perceptible harm” that this Court usually requires for standing purposes. *Id.* at 419. Plaintiffs are political actors who have alleged a political harm. Contrary to positions taken in similar constitutional

cases,<sup>5</sup> this Court has decided that such alleged “harm” is enough to open Iowa’s courthouse doors when the item-veto amendment is at issue. *See Turner*, 186 N.W.2d at 147 (establishing taxpayer standing for item-veto cases); *Rants v. Vilsack*, 684 N.W.2d 193, 198 (Iowa 2004) (citing *Turner*). Assuming the Court intends to continue that tradition, it should at least reaffirm *Turner*’s predicable, bright-line test.

To be sure, the Court should not settle a matter of constitutional importance based on predictability alone. But *Turner* is in no way unfaithful to the Constitution’s text; indeed, it is entirely consistent with it. And it does not restrict the legislature’s power in the least. It simply puts the legislature on notice that if it “expects judicial intervention” then it must use “clear language”—that is, it must be explicit about its intentions. Appel, at 19.

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<sup>5</sup> *Godfrey*, 752 N.W.2d at 417-428 (“[W]e become especially hesitant to act when asked to resolve disputes that require [us] to decide whether an act taken by one of the other branches of government was unconstitutional.”); *Alons v. Iowa Dist. Court for Woodbury Cnty.*, 698 N.W.2d 858, 864-874 (Iowa 2005) (rejecting standing based on taxpayer and legislator status); *see also Bennett v. Napolitano*, 81 P.3d 311, 316 (Ariz. 2003) (holding that legislators lacked standing to challenge item veto as individuals, as legislative representatives, and as taxpayers, and explaining that “[w]ithout the standing requirement, the judicial branch would be too easily coerced into resolving political disputes between the executive and legislative branches, an arena in which courts are naturally reluctant to intrude.”); *Raines v. Byrd*, 521 U.S. 811, 819 (1997) (holding that individual congressmen lacked sufficient personal stake to challenge Line Item Veto Act and explaining that the standing requirement is “especially rigorous when reaching the merits of the dispute would force us to decide whether an action taken by one of the other two branches of the Federal Government was unconstitutional”).

The members of the General Assembly should not run to and rely on this Court to glean from the “context” what they intended but did not write.

Having failed to place such express condition or limitation language in the office-closure provision, the legislature—or at least the plaintiffs in this case—should not be heard to complain. Doing so would only encourage more litigation and further entangle this Court in political disputes.

## **II. The Definitions of “Field Office” and “Workforce Development Center” Are Items Under the Iowa Constitution.**

**Preservation of error.** The parties addressed the issue below on summary judgment and the district court ruled on it. It was preserved.

**Standard of Review.** Whether a provision is an “item” under the Iowa Constitution is a question of law that this Court reviews *de novo*.

*Welsh*, 470 N.W.2d at 647-48.

### **A. The Governor may veto *any* item in an appropriations bill, regardless of whether that item affects any other item.**

Section 15(5) and its Division IV counterpart defined (or redefined) “workforce development center” and “field office” and dictated how Workforce Development must maintain its “presence.”<sup>6</sup>

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<sup>6</sup> Iowa Code already defines the term “workforce development center” and allows Workforce Development to maintain its “presence” in certain counties “through satellite offices *or electronic means*.” (emphasis added). See Iowa Code §§ 84B.1, 84B.2. “Field office” is not defined in the Code, but its use in appropriation bills is nothing new. The Legislature established a Workforce Development field-office fund in 2005 (Iowa Code

The Governor vetoed these provisions, and because they are “items,” he could do so. The district court nevertheless ruled that the Governor’s veto was unconstitutional because it altered, enlarged, or increased the effect of Senate File 517. App. 55. That ruling is contrary to the text of the Iowa Constitution.

Iowans decided in 1968 that they wanted their governor—who, as a state-wide official, would not put the interests of one district ahead of the State as a whole—to be more than a passive player in the appropriation of State funds. *See Colton*, 372 N.W.2d at 192. To effectuate that purpose, they adopted a broad amendment that allows the governor to veto *any* item in an appropriations bill. Iowa Const. art. III, § 16. That authority is without restriction, and this Court is without the authority to restrict it. If a provision is an “item,” the Governor may veto it. Period.

This Court has nonetheless stated in dicta that there is an additional gloss on the Constitution; that the governor cannot strike an item if doing so would affect another item. This idea is often animated by the Virginia Supreme Court’s “scar-tissue test,” which provides that if the governor vetoes an item, “no damage can be done to the surrounding legislative tissue, nor should any scar tissue result therefrom.” *Rants*, 684 N.W.2d at 206

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§ 96.51), and has appropriated millions of dollars for such use. *See e.g.*, Iowa Code § 96.7A.

(quoting *Welsh v. Branstad*, 470 N.W.2d 644, 648 (Iowa 1991) (quoting *Rush v. Ray*, 362 N.W.2d 479, 481 (Iowa 1985) (quoting *Turner*, 186 N.W.2d at 151 (quoting *Commonwealth v. Dodson*, 11 S.E.2d 120, 124 (Va. 1940))))).

That passage is poetic, to be sure. But it finds no home in the Iowa Constitution. Indeed, the scar-tissue test entered this State's lexicon in *Turner*, when the Court was simply explaining how the Virginia Supreme Court interprets the *Virginia* Constitution. *Turner*, 186 N.W.2d at 151. But unlike the Iowa Constitution, the Virginia Constitution expressly limits the types of items that the governor of that state may remove: He or she may veto "any particular item" but "the veto shall not affect the item or items to which he does not object." Va. Const. art. 5, § 6(d). The people of Iowa could have added the same limitation to their Constitution. They didn't.

In any event, the scar-tissue test, while often repeated, has never been anything more than dicta. Indeed, there can be no doubt that the veto in *Turner* left "scar tissue"—that is, it changed the bill. When the legislature sent the Highway Commission appropriation to the Governor, its members surely did not believe that the Highway Commission personnel department would use appropriated funds to move engineers' offices. *See Turner*, 186 N.W.2d at 153. After all, Section 5 of the bill required those offices to stay

put. *Id.* at 149. But Governor Ray vetoed that prohibition, and this Court correctly said he could.

The idea that the governor can *ever* pluck a provision from an appropriation bill without changing its character is simply false. The item veto, in contrast to the general veto, is by definition an affirmative quasi-legislative power. Aptly explained by one commentator:

To veto an item and approve the remainder of a bill is always to enact a piece of legislation that the legislature had not approved. A bill missing an item that was in the bill the legislature passed is a different bill from the one the legislature passed. [. . .] The vetoed item may have been essential to win the approval of some member or group of members whose support may have been necessary to advance the bill, or other, non-vetoed items in the bill, at some critical stage in the legislative process. The vetoed item may have been vital to getting the bill out of committee or to winning majority support on the floor of one legislative chamber. [. . .] Thus, every item veto may, in theory, be a creative act, effectuating an affirmative change in the law.

Briffault, at 1187-88.

The definitions of “field office” and “workforce development center” are items under the Iowa Constitution. And while their removal from Senate File 517 may have affected other items, that is inconsequential under our Constitution. By design, the item-veto amendment made the governor an active player in the appropriation process. This Court may not limit the that authority based on the terms of another state’s Constitution.

### **III. The District Court Applied the Wrong Remedy For a Purportedly Unconstitutional Veto.**

**Preservation of Error.** This issue was argued below on summary judgment and has been preserved.

**Standard of Review.** The remedy for an unconstitutional veto is an issue of law that this Court reviews *de novo*. *Rants*, 684 N.W.2d at 210-11.

- A. **When the Governor strikes a provision from a bill during the pocket veto period, that provision has not been expressly approved and thus does not become law—regardless of whether the veto is constitutional.**

Because the office-closure and definition provisions are “items” under the Iowa Constitution, this Court need not decide whether the district court ordered the proper remedy. Nevertheless the Governor will address the issue briefly, as it may arise in the future.

Usually, the governor has three days to review a bill and determine whether to sign it. If he or she does not do so during that time, the entire bill becomes law. Iowa Const. art. III, § 16. That process works in reverse if a bill is presented to the governor during the last three days of the legislative session (the “pocket veto period”). *Id.*; *see also Rants*, 684 N.W.2d at 210. When that occurs, the governor has 30 days to review the bill. *Id.* If he or she does not act within that time-frame, the entire bill is automatically vetoed—that is, none of it becomes law. *Id.* at 210-11.

The remedy for an unconstitutional item veto depends on when the bill was submitted to the governor. In *Rants*, then-Governor Vilsack attempted to veto an item in what was found to be a *non*-appropriations bill, a practice that is not allowed under the Iowa Constitution. *Rants*, 684 N.W.2d at 210. Because the bill was submitted to Governor Vilsack during the pocket-veto period, and because he did not approve of the *entire* non-appropriation bill within the 30-day window, the entire bill was deemed vetoed by operation of law. *Rants*, 684 N.W.2d at 211.

As in *Rants*, the legislation at issue here was submitted to the Governor on the last day of the legislative session—that is, during the pocket veto period. The district court nevertheless ruled that the office-closure and definition provisions “became law” as if the Governor had not vetoed them. That was error. Under *Rants* the vetoed provisions never became law because the Governor never affirmatively approved them.

Unlike the bill in *Rants*, however, Senate File 517 is an appropriations bill. For that reason, the remedy for an unconstitutional veto is more limited. The Iowa Constitution provides that the “governor may approve appropriation bills in whole or in part,” and that “the *part approved* shall become law.” Iowa Const. art. III, § 16 (emphasis added). In other words, when the governor approves an entire item, it becomes law at that time

regardless of what he does with the remaining items. And if the governor impermissibly vetoes just a piece or segment of an item, then the rest of that item—but only that item—is deemed vetoed by operation of law.

To be sure, the Court's opinion in *Rants* does not draw a distinction between appropriation bills and non-appropriation bills. But *Rants* does make clear that courts cannot enact legislation that the Governor did not sign. The district court therefore erred by reinstating the vetoed provisions.

### CONCLUSION

All of the vetoed provisions in Senate File 517 are items. The Governor's vetoes were therefore entirely proper. The Governor requests that this Court reverse the judgment of the district court and remand the case with instructions to enter judgment in his favor.

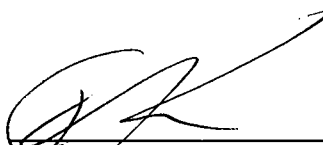


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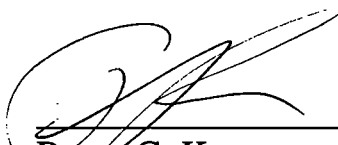


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**CERTIFICATE OF FILING**

The undersigned hereby certifies that he or a person acting on his behalf will file the attached Brief by hand delivering eighteen copies to Clerk of the Iowa Supreme Court, Iowa Judicial Branch Building, 1111 E. Court Avenue, Des Moines, Iowa 50319 on February 6, 2012.



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I certify that on February 6, 2012, I mailed two copies of this brief to the attorneys of record:

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